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The Nazification of Danzig

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The Nazification of Danzig

BY MILDRED S. WERTHEIMER

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THE problem of Danzig may seem relatively unimportant in the midst of the European crisis, but it offers a significant test case of Nazi policy concerning Germans outside the Reich. The Free City of Danzig—a miniature state comprising the port and municipality of Danzig with a small hinterland—was detached from Germany by the Versailles Treaty in order to provide an outlet to the sea for the newly reconstituted Republic of Poland. Danzig is joined to Poland in a customs union, and the Polish government controls the foreign affairs of the Free City. Otherwise Danzig is legally a self-governing state, administered under a democratic constitution. Its local government consists of a popularly elected Assembly (*Volkstag*), which in turn chooses an executive body—the Senate—whose President is the Premier of the Free City. The Danzig constitution is guaranteed by the League of Nations, which has supervisory powers in the territory and is charged with maintaining both the independence and democratic character of the Free City.

Despite the efforts of the League and the League High Commissioner resident in Danzig, the Free City has become to all intents and purposes a miniature Third Reich since Hitler's accession to power in Germany. Admittedly 95 per cent German, Danzig has always maintained close relations with the Reich. Today, however, the Nazis regard it as merely a "district" (*Gau*) of the party and, while the nominal independence of the Free City is preserved, the real source of power is the party district leader who controls the local government. The *Volkstag* occupies a position analogous to that of the German Reichstag and the Senate has become a sort of rubber stamp cabinet. Opposition parties in the Free City—representing more than 40 per cent of the population—continue to function after a fashion, but owe their precarious existence

entirely to the vigilance of the League High Commissioner and the Council.

Before Hitler's advent to power and the Nazification of the Danzig government which followed in May 1933, the chief task of the League High Commissioner in the Free City, as well as the League Council, had been settlement of disputes between Poland and Danzig. These questions were so numerous that hardly a session of the Council was not called on to deal with some problem pertaining to Danzig.¹

The Nazi revolution was reflected in Danzig by the vote for the *Volkstag* on May 28, 1933, when the Hitlerites secured a majority but fell far short of the two-thirds necessary to amend the Danzig constitution.² The new government in the Free City was headed by Dr. Rauschning, President of the Senate, who immediately undertook to put Danzig-Polish relations on a new footing. Negotiations were opened with a view to settling numerous controversies of long standing.³ Poland and the Free City on August 5, 1933 signed two important conventions: one regulating utilization of the port of Danzig by Poland, and the other relating to treatment of Polish nationals and those persons of Polish origin or speech in the territory of the Free City.⁴ By the harbor agreement Poland pledged itself immediately to take all necessary steps to

1. League of Nations, *Ten Years of World Cooperation* (Geneva, Secretariat of the League of Nations, 1930), pp. 386 *et seq.*

2. Dr. Georg Crusen, "Die Beziehung der Freien Stadt Danzig zu Polen seit der Uebernahme der Regierung durch den Nationalsozialismus," *Zeitschrift für Völkerrecht*, Vol. 19, No. 1 (Breslau, 1935).

3. At the beginning of 1933, 25 unsettled disputes between Danzig and Poland were pending in Geneva. Crusen, "Die Beziehung der Freien Stadt Danzig zu Polen," cited, p. 42.

4. For texts, cf. League of Nations, *Official Journal*, October 1933, pp. 1156 *et seq.*; and additional Protocol, signed at Warsaw on September 18, 1933, *ibid.*, pp. 1541 *et seq.*

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prevent a decrease in the amount of sea-borne traffic passing through Danzig, and to insure, in the future, equal participation for the Free City in this traffic. The parity of Danzig with the new Polish port of Gdynia was recognized by Poland, which promised to remedy, at least in part, the inroads made by the new port in the Free City's trade.⁵ Questions concerning the use of the port of Danzig, which had been pending before the League Council, were deferred by the new convention for the period of its duration; and in October 1933 a further understanding between Warsaw and Danzig provided that all future differences of opinion should be settled directly, without recourse to the League of Nations.⁶ Improved Danzig-Polish relations thus preceded by some months the broader German-Polish treaty of rapprochement signed on January 26, 1934.⁷

Although the tension which had characterized German-Polish and Danzig-Polish relations for many years was appreciably diminished by these arrangements and Geneva was no longer called on to settle disputes between Warsaw and Danzig, new difficulties arose with Nazi domination of the Free City. The fact that the Free City's constitution was guaranteed by the League of Nations did not allow the Nazis to thrust it aside—as they had done with the Reich constitution—and gave anti-Nazi elements in the Free City recourse to an international forum where their grievances could be aired and their constitutional rights, theoretically at least, could be protected.

On May 14, 1933, before the formal installation of a Nazi government in Danzig which took place only after the May 28 election, the Nazi leaders in the Free City, Dr. Rauschning and Herr Forster, assured the League High Commissioner that should the Nazis take over the Danzig government, they "would loyally observe the constitution."⁸

Shortly after taking office, however, the Danzig Nazi government—following similar action in the Reich—introduced an Enabling Act into the *Volksstag* on June 24, 1933 which was passed by 50 votes to 19. This bill invested the government with full powers and allowed it, within the general framework of the constitution, to promulgate decrees having the force of law.⁹ The government

proceeded immediately to adopt a large number of measures under the Enabling Act, one of the most important of which was designed to "increase public safety and order." This measure, promulgated on June 30, made it possible for persons to be placed in "protective custody" (*Schutzhaft*) by the authorities for three months without legal redress. During the summer this decree was applied with increasing frequency, and part of the Danzig population "was becoming rather alarmed," while the local Nazi paper published "extremely violent articles with threats to lynch opposition politicians."¹⁰ The League High Commissioner protested to the President of the Senate that these measures were incompatible with the constitution, and on September 8 the Senate reduced the three-month period of possible custody to three weeks. Under a clause which was retained, however, it was possible to impose an indefinite number of three-week terms.

It is obvious even from the diplomatically guarded language of the High Commissioner's report that considerable Nazi terror existed in Danzig during 1933, and that the Nazis were determined to suppress all opposition. The then Vice President of the Senate, Herr Greiser, stated in a public speech that all police officials must be Nazis and that there was no longer any room in the Danzig civil service for members of other parties.¹¹ Catholic and Socialist newspapers were suspended by the government on the ground that their reports of Greiser's speech "endangered public order and security." The censored editors petitioned the League High Commissioner for redress, but the Danzig Senate, when presented with the petitions by the High Commissioner, categorically stated that there could be no question of cancelling the suspensions and declared that, for the security of the state, it must place the petitioners in protective custody.

This incident brought to a head the question of the duty and powers of the League High Commissioner, the scope of the League guarantee of the constitution, Nazi constitutional violations and the right of Danzigers to present petitions. The League Council considered the Danzig situation from these various angles at its January 1934 session. Sir John Simon, British Foreign Secretary, as rapporteur, stated that it seemed clear that "the League's guarantee of the Danzig constitution implies for the Council the right and duty to satisfy

5. Cf. p. 71.

6. Crusen, "Die Beziehung der Freien Stadt Danzig zu Polen," cited, p. 43.

7. Vera Micheles Dean, "Toward a New Balance of Power," *Foreign Policy Reports*, May 9, 1934.

8. Cf. letter from the High Commissioner to the Secretary-General of the League, with annexed interview between the High Commissioner and Rauschning and Forster, *Official Journal*, June 1933, p. 702.

9. *Official Journal*, August 1934, p. 997. For text of the law, cf. C.419.1933.1.

10. "General Report of the League High Commissioner at Danzig, January 6, 1934," *Official Journal*, August 1934, pp. 995 *et seq.*

11. *Official Journal*, February 1934, pp. 137 *et seq.*, pp. 214 *et seq.*

itself in general that the constitutional life of the Free City is in keeping with that constitution."¹² While agreeing that Danzig should retain its autonomy, the Council insisted on remaining the sole judge of its own action in every new case submitted to it. Having thus established its right closely to supervise internal Danzig affairs, the Council accepted the Senate's assurance that Greiser had in no way intended to dispute the validity of the constitution but warned the Free City not to violate that instrument. The Council took no action regarding the suspended newspapers, both of which had reappeared. The Senate's threat to imprison the editors who petitioned the High Commissioner was condemned, however, and the right of petition was reaffirmed by the Council. Sir John Simon's report was accepted by Dr. Rauschning, President of the Danzig Senate, who reiterated that the government of the Free City "would remain in the future as in the past within the limits of the constitution." The rapporteur, nevertheless, once more admonished the Danzig Nazis to observe the constitutional freedom of the press.

Despite this warning, the Catholic paper, *Danziger Volkszeitung*, was seized by the police on February 24, 1934 because of "incomplete and tendentious" quotations from Simon's report to the Council. On March 28 it was suspended for three months for accusing the Nazi press in Danzig of "arousing hostility against religious associations." The Social Democratic organ, *Die Volksstimme*, was suspended for six months on June 26 because it had charged certain members of the government with unconstitutional actions. After strong representations to the President of the Danzig Senate,

12. This opinion was based on Article 103 of the Versailles Treaty which placed the Danzig constitution under League guarantee and on two decisions of the Council: a report of November 17, 1920 made by Viscount Ishii, rapporteur, which stated that the League guarantee implies (1) that the constitution must be approved by the League; (2) that the constitution can only be changed with the consent of the League; (3) that the constitutional life of Danzig must always be in accordance with the terms of the constitution. The Ishii report also declared that the Danzig constitution must "ensure a government which will carry out its duties in accordance with the principles on which the Free City has been constituted." The second Council decision, taken on June 10, 1925, authorized the High Commissioner as the League's representative in Danzig, "to receive petitions from nationals of the Free City and if necessary, draw the Council's attention to cases in which there is a danger of the constitution's being infringed, no distinctions being made between the various stipulations of the constitution." Finally, the Permanent Court of International Justice in an advisory opinion dated February 4, 1932 pointed out that the Danzig constitution contains an article (42), inserted by the League Council, which provides that the Danzig Senate shall furnish to the League "at any time upon request of the latter, official information regarding the public affairs of the Free City." *Official Journal*, February 1934, p. 137.

the High Commissioner succeeded in bringing about a repeal of this ban.

During the remainder of 1934 the League Council was not called upon to consider any internal Danzig questions. On the other hand, within the Free City political battles continued to rage both between Nazis and Opposition parties and within the National Socialist party itself. The latter contest centered on the struggle between Dr. Rauschning and Herr Forster, Nazi District Leader (*Gauleiter*), on the question of Nazi leadership in Danzig, and involved fundamental policies as well as factors of personal ambition.

MODERATES VS. RADICALS

Dr. Rauschning, the first Nazi President of the Danzig Senate—a native Danziger¹⁵—seems to have devoted his major efforts to improving relations between the Free City and Poland while maintaining Danzig's German character. He endeavored to ameliorate the Free City's economic position and to live up to his promises that the constitution would be respected. By contrast, Albert Forster, a young Bavarian, had been one of Hitler's earliest supporters and, as a reward for his long service, was sent to Danzig as *Gauleiter*, although he completely lacked knowledge of local conditions in the Free City. Forster was responsible only to the Reich party authorities.

During the summer and autumn of 1934 Forster had eliminated Dr. Rauschning from active participation in the government, without securing his formal resignation. In November of that year, however, Rauschning's retirement—ostensibly on the ground of ill health—was announced.¹⁶ The conflict between Forster and Rauschning throws much light on relations between Hitler Germany, where state and National Socialist party are officially identical, and the Free City of Danzig which, despite its theoretically independent status, is regarded by the Nazis as a district (*Gau*) of the party. Above all, Dr. Rauschning's letter explaining his compulsory retirement gives a clear picture of conditions in Danzig itself under Nazi rule and shows why, since the end of 1934, the situation in the Free City has become increasingly worse.

Dr. Rauschning declared¹⁷ that his abstention

15. Dr. Rauschning is the author of a highly regarded work on German-Polish relations, entitled *Die Entdeutschung Westpreussens und Posens* (Berlin, Reimar Hobbing, 1930).

16. For text of letter to Rauschning from the Nazi President of the *Volksstag* expressing regret that ill health made Rauschning's retirement imperative, cf. *L'Europe Nouvelle*, August 3, 1935, p. 749.

17. For full text of the Rauschning letter (November 19, 1934) to the President of the *Volksstag* and of his subsequent open letter to Forster (April 4, 1935), cf. *Official Journal*, February 1936, pp. 193 et seq.

from exercise of his official functions was due not to ill health, but to Herr Forster's orders and his statement that Rauschning no longer enjoyed his confidence. Forster and Greiser, however, had spread the report in Danzig and in Reich high party circles that Rauschning had allowed himself "to be 'bought off' retirement by grants or promises of money." Forster had also "frequently stated" that Rauschning was "a traitor to [his] country and deserve[d] to be shot as such." Defending himself against these charges, Dr. Rauschning then reviewed his major worries concerning the Danzig situation.

He characterized the economic crisis as very grave and expressed the "utmost anxiety" that the Senate had taken no action to relieve "the most pressing requirement of the present position, namely, the maintenance of Danzig's economic independence." The economic policy of the government, he continued, would lead in a very short time to collapse of the currency; not only would Danzig's chief economic problem—its huge passive balance of payments—not be solved, but the Free City would be placed "at the mercy of foreign countries." Rauschning stated further that he felt it was an "irresponsible policy" to rely entirely on the Reich for assistance, although Herr Forster had reported receiving a definite promise of such aid from Hitler. Danzig, according to Rauschning, must stand on its own feet. He declared that he had prepared plans to achieve this end but Forster's opposition had prevented their application, and Forster had "allowed minor and major officeholders of the party to take steps and make public utterances which conflict entirely . . . with this recognition of the facts." Forster had continued to rely on "the prospect of a rapid improvement of the position of the Reich," a policy which Rauschning characterized as "wholly unfounded optimism." Meanwhile, the serious economic situation, aggravated by the rapid exodus of foreign exchange from Danzig, had been rendered worse by the government's ill-advised expenditures to provide work for the unemployed.

Dr. Rauschning also severely criticized the internal political methods pursued by Forster, pointing out that the economic situation demanded unpopular measures in which "the other parties should be given a share in the responsibility" to insure "unity of the entire population." He had therefore urged a political truce with all "non-Marxist" parties but instead Forster's office had called on him, "regardless of consequences, to employ all the means at the State's disposal to suppress the minority parties," and had even demand-

ed the arrest of "a number of Catholic priests." Rauschning had refused to comply, both because of the legal difficulties involved and because he felt that the Free City must at least attempt to obtain foreign loans in order to maintain its currency. "The obtaining of such loans, already sufficiently difficult, would become an impossibility if Danzig were to become subject to the full pressure of an external economic boycott which could not fail to result from drastic measures against ecclesiastics, Jews, etc." For the same reason, Rauschning had opposed holding another election.

In foreign policy, Rauschning was equally critical, pointing out that the new reconciliation with Poland was still a bone of contention within the party and that it was possible for Warsaw to depart from its present friendly attitude toward the Reich—and therefore toward Danzig. He plainly showed, moreover, that he had always feared that Danzig-Polish reconciliation might involve "grave dangers for the maintenance of Danzig's German character." Rauschning therefore had continuously urged the necessity of enlisting the good will of foreign powers—notably the Soviet Union—"which might support Danzig in the fresh conflicts which are only too likely to arise." This policy had been opposed by the Danzig party leaders and by the Reich as well. Rauschning had then tried to interest Britain and had at least succeeded in avoiding hostility in London because he was able "to prove that constitutional methods were being maintained in Danzig." Constitutionality, he declared, was important to prevent the League Council from acting against Danzig and, after Germany's withdrawal from Geneva, had become an "essential condition of Danzig's survival." The Danzig constitution and the League's protection, Rauschning asserted, "constitute the only guarantee of Danzig's sovereignty and are all that stands between Danzig and absorption into Polish territory which Poland has never ceased to claim . . . Any fundamental opposition to the Council, or any serious breach of the constitution must have the consequence of placing Danzig entirely in Poland's power." Therefore Rauschning warned that the Danzig government must not needlessly antagonize the League High Commissioner by serious breaches of the constitution such as suspension of Opposition newspapers, conflicts with the Catholic Center party, which could only result in a "severe public setback" to Danzig's prestige, or force the Free City "to take the highly dangerous course of an open conflict with the League of Nations, which would tie Danzig for better or worse to Poland."

Finally, Rauschning severely criticized Nazi ac-

tion in placing party above state, and above all condemned the personal politics played by Forster. Untrained, ignorant persons had been placed by the *Gauleiter* in positions of responsibility, he declared, and the party's continual interference with the civil service had undermined the state's authority and created "servility and pusillanimity" among a large number of officials so that "the necessary expert knowledge for the drawing up of laws and decrees is now practically unobtainable."

Inspired by the overwhelming Nazi victory in the Saar plebiscite of January 13, 1935 and encouraged by the 80-per-cent pro-Nazi results in rural Danzig (*Kreistag*) elections held in November 1934, the Free City Nazis decided early in 1935 to prove to Geneva and the world that Danzig was completely National Socialist. This determination was strengthened by Nazi annoyance at petitions submitted to the League by all the Catholic priests in the Danzig diocese and by the Catholic Center party as well, charging the Nazis with violation of constitutional rights of association. Consideration of these accusations had been postponed by the Council at its January 1935 session on the ground—advanced by the Danzig authorities—that negotiations were about to be opened between the Catholic petitioners and the Danzig government. Greiser, President of the Danzig Senate, moreover, again assured the Council that, since assuming power, the National Socialist government of the Free City had at all times most scrupulously observed the letter and spirit of the constitution.¹⁸

Claiming that no agreement was possible between the Catholics and the Nazi majority in Danzig, the Senate proposed new elections which should "unequivocally announce to the entire world" the wishes of the people of Danzig. The *Volksstag* then dissolved itself on February 21 by a vote of 40 to 20, although its mandate still had two years to run.¹⁹ New elections, called for April 7, were to give the Nazis a free hand in the territory by achieving at least two-thirds majority of the *Volksstag* necessary to amend the constitution, although such changes required the Council's consent.

The election campaign was almost entirely a Nazi affair. Despite the efforts of the League High Commissioner and the promises of the Danzig authorities to observe the constitution, Opposition newspapers were suppressed and very few Opposition meetings took place, while the Nazis held more than a thousand parades and assemblies and had sole use of the radio. The most important Nazi chiefs from the Reich addressed huge mass meet-

ings on the eve of the poll, telling the Danzigers they should show the world that the Free City was National Socialist in order to prove that it was German. The campaign slogans proclaimed that "German Danzig votes National Socialist. There are only two fronts: National Socialists and Separatists." The Opposition parties were branded as traitors to the German cause.²⁰

Despite undoubted terrorization of the Opposition, the Nazis were unable to secure two-thirds of the votes cast on April 7, polling only 59 per cent of the total. They did, however, temporarily gain two seats in the *Volksstag*,²¹ although the Social Democrats and the Center party maintained their former strength, as did the small Polish group. The Communists lost almost half of their supporters, while the German Nationalists polled a slightly larger popular vote than at the 1933 elections. Nearly 20,000 more votes were cast than in 1933,²² and for the first time in the history of the Free City, Danzig residents abroad were allowed to vote. It was officially estimated that about 7,000 voters came from the Reich to exercise this right and 500 from Poland. Yet, instead of proving to the world that Danzig was overwhelmingly Nazi, the poll showed that at least 40 per cent of the Danzigers were opposed to the régime.

ECONOMIC AND FINANCIAL CRISIS

Thus, as Dr. Rauschning had predicted, the election resulted primarily in sharpening existing differences of opinion. Shortly after the vote, moreover, the economic difficulties which he had foreseen became acute. On May 2 the Danzig gulden was suddenly devalued by 42.37 per cent, and devaluation was followed by a virtual currency and tariff war between the Free City and Poland. These developments were the result of several factors. Although Danzig is a small and not highly industrialized economic unit, the Nazis are reported to have spent almost \$5,000,000 on public works alone during their first two years in office. The statute of the Bank of Danzig forbade it to lend money to the government, but the Nazis established a City Bank (*Stadtbank*) through which they managed to circumvent this difficulty. For two years, moreover, the Reich had contributed subsidies to the Free City estimated at 3 million

20. Cf. M. S. Wertheimer, "Aims of Hitler's Foreign Policy," *Foreign Policy Reports*, June 5, 1935; *Official Journal*, June 1935, pp. 819 *et seq.*

21. Cf. p. 72.

22. 235,062 valid votes were cast in 1935, as compared with 214,128 in 1933. For complete returns, cf. *Official Journal*, June 1935, pp. 824-825.

18. *Official Journal*, February 1935, pp. 139 *et seq.*

19. *Ibid.*, June 1935, pp. 819 *et seq.*

gulden a month (\$584,100 at par), and during that same period no complete budget estimates were published in Danzig.

From the beginning of 1935, however, confidence began to recede, savings were withdrawn and foreign currency hoarded. The failure of the Nazis to achieve at least a two-thirds vote in April—especially since 1,500,000 gulden, most of it contributed by the Reich, had been spent on election propaganda—proved a further shock to confidence. German subsidies abruptly ceased, and a German default on debts due for Danzig agricultural produce left some 15,000,000 gulden frozen in the Reich. As a result, the gold coverage of the Danzig currency fell 5 points below the statutory 40 per cent and the Nazis were compelled to devalue.²³

Difficulties multiplied during the following months. By the middle of June the flight from the gulden had reached such large proportions that the Bank of Danzig introduced a Draconian ban on exportation of foreign currencies. These measures, however, were so stringent as to be unworkable in practice, and were modified on July 17. Foreign exchange control was bound to have grave consequences for a small state like Danzig, which largely depends on its international trade and was already threatened by the Polish port of Gdynia. Meanwhile, the Poles strongly protested against the Free City's action, which had frozen in Danzig a sum estimated at 8 to 70 million Polish zloty. Negotiations which opened in June between Danzig and Warsaw broke down when the Danzigers refused to consider introduction of the zloty into the Free City. The Poles then instituted reprisals against Danzig, insisting on prepayment of freight on Danzig transit traffic while giving Gdynia financial concessions. On July 21 a further Warsaw decree went into effect, providing that all goods consigned to Poland must be handled in future by the Polish customs authorities and suspending the powers of the Danzig customs officials to act as Polish agents. A further decree imposed duties on transit goods via Danzig. In retaliation, the Danzig Nazis declared a "state of emergency" on August 1 and announced that certain German goods might enter Danzig duty-free.²⁴

Thus Dr. Rauschning's predictions again proved correct. The Nazis had counted on the Reich to pay for their improvident expenditures, but Dr. Schacht—beset by growing economic and financial difficulties within Germany—had been able to give them little more than moral support. Probably as a

result of pressure from Berlin, direct Danzig-Polish negotiations were reopened, a protocol was signed on August 8 and the Free City abandoned the decree allowing certain German goods to enter its territory without duty. Poland, for its part, cancelled the levies on transit goods via Danzig. Discussions were opened, moreover, between the Bank of Poland and the Bank of Danzig concerning Polish export proceeds "frozen" in Danzig, and the Poles apparently renewed their previous²⁵ promise to give Danzig equal treatment with Gdynia.²⁶ Although the crisis in Danzig-Polish relations seems to have been at least temporarily settled, it is obvious from the amount of goods passing through the ports of Gdynia and Danzig that the former—despite Polish promises—continues to be a serious menace to Danzig, as shown in the following table.

	Exports	Imports	Total*
	(in thousands of tons)		
GDYNIA			
1933	5,235	871	6,106
1934	6,200	992	7,192
1935	6,428	1,207	7,635
DANZIG			
1933	4,659	492	5,151
1934	5,713	656	6,369
1935	4,314	779	5,093

* 1933 figures from Bank Gospodarstwa Krajowego, *Monthly Review* (Warsaw), January 1935, p. 12. 1934 and 1935 figures from *ibid.*, January 1936, p. 14.

POLITICAL UNREST

The economic and financial crisis which came to a head after the April elections was paralleled by political unrest and further Nazi measures of an unconstitutional nature. The Danzig Opposition continued to petition the League, charging violation of their right of equality before the law. Further petitions, presented jointly by the Social Democratic, Catholic Center and German National People's parties urged that the general elections of April 7, 1935 should be declared invalid on the ground that during the campaign there had been flagrant infringements of the electoral provisions of the constitution through unlawful pressure on public opinion and other serious procedural irregularities.²⁷ The petitions pointed out that the Danzig Supreme Court itself had established infractions of this character in 18 rural districts and had declared the election in these places invalid. In other electoral districts, the Court had confirmed cases of violation of the secrecy of the ballot and

25. Cf. p. 67.

26. *The Economist*, August 24, 1935.

27. *Official Journal*, February 1936, pp. 184 *et seq.*

23. *The Economist* (London), July 27, 1935.

24. *The Economist*, July 27, August 10, 1935.

rectified the result of the count, invalidating individual votes in some instances. The Court also found interference with the electoral campaign of the Opposition and inertia on the part of the police force. In general, the Court concluded that the principle of freedom of election had been violated, and as a result disqualified 3 per cent of the Nazi votes in the town and 10 per cent in the country. Thus, in the final results of the elections, the Nazis gained only one seat, polling 57.3 per cent of the votes.²⁸ The Danzig Supreme Court, however, stated in its decision that "while it is true that there have been serious, indeed very serious, offences against the principles of free and equal voting in numerous cases," the election as a whole was valid. The Opposition, therefore, referred the question to Geneva, charging that the elections were invalid both because of the facts established by the Danzig Supreme Court itself and because of repeated interference by *Gauleiter* Forster.

Meanwhile, throughout 1935, the Nazis had continued to put into effect administrative measures designed to circumvent the constitution, concentrate all power in the hands of the party, effectively suppress the Opposition and introduce the anti-Semitic and anti-Catholic policies of the Hitler government. As a result, the League Council was called upon at its May 1935 session to consider petitions from Catholics, Social Democrats and Jews, charging grave infractions of the constitution.²⁹ The Catholics protested against decrees limiting the Catholic young people's right of association and wearing of uniforms which, they felt, contravened not only the constitutionally guaranteed right of freedom of association, but also Article 73 of the constitution which provides for complete equality before the law, inadmissibility of "exceptional laws" and prohibition of "legal privileges or disqualifications due to birth, position or creed." The anti-Catholic measures, which paralleled similar steps in the Reich,³⁰ were designed to undermine the Church's control of youth and education. The Social Democrats petitioned against Nazi suppression and prohibition of their newspaper, *Die Volksstimme*, basing their case on the guaranteed right of freedom of the press. The Jewish petitions charged introduction of official Nazi anti-Semitism in Danzig, in violation of the constitution, which had prevented promulgation of measures corresponding to the civil service law in the Reich on which all subsequent German anti-Jewish

decrees have been based.³¹ In this connection, however, the Danzig Senator for Justice is reported to have said that "one cannot make a law here as in Germany, but administrative measures will be adopted which will lead to the same results."³²

The Jews had been assured in August 1933 by Herr Greiser that the Nazis would carefully observe the constitution and all treaties, and in July 1934 Dr. Rauschning reiterated these pledges in the press. Both governmental declarations, moreover, were unsolicited by the Jews. Despite these official statements, the petitions of the Jewish organizations set forth in detail the precarious position of the Danzig Jews, who claim to have been deprived of their constitutional rights of equality before the law, and add that their entreaties to the Senate have not led to amelioration. Thus it appears from the petitions that leading officials, including Greiser and Forster, had made violent anti-Semitic speeches, while the Nazi press had continually incited the public against the Jews. The Senate, moreover, had issued administrative regulations which effectively control admission of Jews to the professions and the civil service. There is an organized boycott against Jewish professional men, and the position of Jewish school teachers is precarious, many having been demoted without explanation. There has also been an economic boycott in the general field of business and industry.

The League Council took note of the Catholic, Socialist and Jewish petitions at its May 1935 session but because of the "fundamental divergence of views in the interpretation of the constitution" revealed by the petitions and the Senate's comments on them, the Council appointed a Jurists' Committee to determine to what degree the Danzig constitution had been violated.³³ Herr Greiser assured the Council that if it concluded, in the light of the jurists' opinion, that the constitution had been infringed on certain points, the Danzig Senate would "modify its opinion on the basis of the Council's interpretation and would take appropriate measures."

The Jurists' Committee, composed of Swedish, Dutch and Swiss experts, met in Geneva from July 22 to 26, 1935.³⁴ Its report found that the Senate's

31. Cf. M. S. Wertheimer, "The Jews in the Third Reich," *Foreign Policy Reports*, October 11, 1933.

32. *Official Journal*, June 1935, p. 837. The Senate denied that such a statement had been made, declaring that "it is obviously most unlikely that a Senator occupying an important and responsible position would make such an imprudent remark." *Ibid.*, p. 853.

33. *Ibid.*, pp. 648 *et seq.*

34. For text of report of the Committee of Jurists, cf. *ibid.*, November 1935, pp. 1292 *et seq.*

28. Cf. Annual Report of the High Commissioner [for Danzig], *Official Journal*, February 1936, pp. 202 *et seq.*

29. *Official Journal*, June 1935, pp. 648 *et seq.*, 761 *et seq.*

30. Cf. M. S. Wertheimer, "Religion in the Third Reich," *Foreign Policy Reports*, January 29, 1936.

decree (April 4, 1934) limiting the right of associations to wear uniform to those groups authorized by the Senate, as well as the manner in which the decree had been applied, infringed the fundamental rights of Danzig citizens. The further Catholic complaint against a decree restricting school associations to those groups which "give an education in conformity with the National Socialist state," and particularly directed against religious associations, had been partly amended by the Senate in May 1935. The jurists therefore confined themselves to warning that, although the decree itself was not unconstitutional, its application must conform to that instrument.

The Center party had petitioned against a decree (October 10, 1933) which in effect accorded legal protection only to those bodies under National Socialist control, including the party and its various subordinate organizations and the associations affiliated with it. The jurists considered that the decree was founded on the idea that it is permissible for an authority of the Danzig state to apply differential treatment to associations in the Free City "according to whether they support the government or not," but that this was contrary to the fundamental principle of equality before the law and therefore unconstitutional. Further protection for the privileged associations, contained in an insertion in the Danzig Criminal Code, made membership in an association not approved by the Senate a prison offense. This measure was also held unconstitutional. In like manner, a Center party protest that the Senate had described the National Socialist Teachers' Association (in a decree of December 16, 1933) as the "sole body representing the Danzig teachers' profession within the constitution" was declared by the jurists to be satisfactory only if the measure was not utilized "for the purpose of favoring a particular party or the ideas of 'racisme,' which would be absolutely contrary to the constitution of Danzig."

With regard to the Social Democratic petition protesting against suppression of the *Volksstimme*, the jurists felt that the five months' prohibition had been "excessive" and constituted a "somewhat serious abuse of power" on the part of the Danzig authorities. This action, they stated, was "incompatible with the freedom of the press" and the petition was therefore justified.

In relation to the detailed petitions of the Jewish organizations, the jurists' opinion was less definite. The Senate's observations on these petitions had "forcibly denied a large number of facts" and the committee therefore felt it impossible to form any opinion on these facts unless it were to conduct

an inquiry on the spot, which would exceed its mandate. At the same time, in reference to other parts of the petition the jurists quoted certain anti-Semitic comments made by the Senate itself in its observations on the report. The committee consequently warned the Danzig administration that the Nazi majority was not identical with the whole population, declaring that the Senate's administrative acts must not be prejudicial to some sections of the people and stating categorically that a program eliminating the Jewish element from public office on racial and religious grounds, even though supported by a majority of the electors, "is contrary to the constitution and cannot be applied in administrative matters." Finally, the committee guardedly censured the reported boycott of Jewish firms and professional men.

Despite the relatively moderate character of the jurists' report, as well as Greiser's assurance to the Council in May, the Danzig Senate raised many objections to the report in a memorandum communicated to the Council on September 14. This document³⁵ was considered by the Council at its September session, together with the petitions themselves and the jurists' report.³⁶ Mr. Anthony Eden, the rapporteur, pointed out that the Danzig Senate had urged the Council not to concur in the view of the Jurists' Committee that the decrees for protection of the good name of national associations and the measure on wearing uniforms were unconstitutional, "since to do so would involve dissenting from four judgments of the Criminal Chamber of the Danzig Supreme Court." Nevertheless, after summarizing the main points of the petitions and the jurists' report, as well as the Senate's observations, Mr. Eden recommended that the Council endorse the jurists' opinions and express "its concurrence in the general considerations they put forward concerning the spirit in which the constitution should be applied." He reminded the Council again of Herr Greiser's pledge in May and asked that the Council "recommend the Senate to take the necessary measures to remedy the situation revealed by the petitions . . . and by the jurists' report, by bringing the legislation of the Free City into conformity with the constitution . . . and by insuring in the future the strict observance of the principles of the constitution in the application of all laws." Finally, the rapporteur proposed that the Council request Herr Greiser to submit through the High Commissioner, at the next session of the Council, a report on the Senate's action taken in accordance

35. *Ibid.*, pp. 1310 *et seq.*, C.367.1935.VII.

36. *Ibid.*, pp. 1187 *et seq.*

with the Council's recommendation. The Council accepted the jurists' report and adopted these suggestions on September 23.

A further question of fundamental importance was considered by the Council at its September 23 meeting, namely a joint petition presented by the German National, Social Democratic and Center parties of Danzig, protesting against legislative decrees promulgated on August 29 by the Danzig Senate amending the Penal Code in force in the Free City. Mr. Eden, rapporteur, expressed doubt in two respects concerning the constitutionality of the decrees: first as to whether the Enabling Act really conferred on the Senate the power to reform the penal code; and second whether the decrees were consistent with the Danzig constitution. He therefore proposed that the Council obtain the advice of the Permanent Court of International Justice in the matter. The Council accepted this suggestion and requested the Court for an advisory opinion as to the constitutionality of the decrees.³⁷

Complying with the Council's request, the Permanent Court of International Justice rendered an advisory opinion, adopted by a vote of 9 to 3 on December 4, 1935, which declared that the decrees are "not consistent with the constitution of the Free City of Danzig, and that they violate certain provisions and certain principles thereof."³⁸ The Court's opinion brings out clearly the fundamental conflict between the conceptions of totalitarianism and democracy. The opinion stated that the decrees had introduced fundamental changes in the Danzig Penal Code. Before the promulgation of these measures, the Code had provided that "an act is only punishable if the penalty applicable to it was already prescribed by a law in force before the commission of the act."³⁹ In other words, the law alone determines and defines an offense and decrees the penalty for it, and criminal laws cannot be defined by analogy.

The first decree modifying the Danzig Penal Code laid down the rule that an act is punishable where it is declared by law to be punishable and where, according to the fundamental idea of a penal law and according to sound popular feeling, it deserves punishment. It provided, however,

37. *Ibid.*, Council minutes, pp. 1192 *et seq.*; for texts of the petition, the Senate's decrees and observations of the Senate, cf. *ibid.*, pp. 1336 *et seq.*

38. Permanent Court of International Justice, *Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City*. Series A/B, Judgments, Orders and Advisory Opinions, Fascicule No. 65 (Leyden, A. W. Sijthoff's Publishing Company, 1935).

39. The legal maxims *nullum crimen sine lege* and *nulla poena sine lege*.

that where there is no particular penal law applicable to the act, it shall be punished in virtue of the law whose fundamental conception most nearly applies. The second Danzig decree laid down procedure for applying this rule, prescribing, as the Permanent Court pointed out, two conditions in "reverse order." Thus the Public Prosecutor and the tribunal, "in case of an act not declared punishable by law, must first apply the criterion of sound popular feeling, and, if it is found that the act deserves punishment, must then examine whether the fundamental idea of a penal law requires that it should be punished." These provisions were designed to enable the judge, by analogy, to create law to fill gaps in the Danzig penal legislation. The agent of the Free City had contended before the Court that according to this new conception, real justice will take the place of formal justice and henceforth the rule will be no crime without punishment, instead of no crime without law and no punishment without law. The Court, however, declared itself unconcerned with the relative merits of penological ideas; the sole question was whether the two decrees violated "any of the provisions or principles of the constitution."

The opinion then established that under the decrees, it was not a question of applying the text of a law itself but of applying "what the judge (or the public prosecutor) believes to be in accordance with the fundamental idea of the law" and what he "believes to be condemned by sound popular feeling." A system was thus set up in which the criminal character of an act and the penalty attached to it "will be known to the judge alone." Therefore it was possible that a person accused of a crime might be tried and punished for an act which he did not know was an offense "because its criminality depends entirely upon the appreciation of the situation by . . . the judge."

In determining whether this new principle was consistent with the Danzig constitution, the Court discussed the underlying conceptions of that instrument, pointing out that the "fundamental rights" laid down there are "designed to fix the position of the individual in the community and to give him the safeguards which are considered necessary for his protection against the state." Its opinion rested on the fact that the new decrees "empowered a judge to deprive a person of his liberty even for an act not prohibited by law . . . [and] therefore transfer to the judge an important function which, owing to its intrinsic character, the constitution intended to reserve to the law so as to safeguard individual liberty from any

arbitrary encroachment on the part of the authorities of the state." For, the Court continued, the constitution is based on the conception that its object is to protect the individual against the state, while the decrees are founded on the contrary thesis, the object of which is said to be to protect the community against the criminal. The decrees were therefore found to be unconstitutional.

LEAGUE COUNCIL REBUKES NAZIS

When the League Council met in January 1936, it had before it not only the opinion of the Permanent Court, but also the annual report for 1935 of its High Commissioner in Danzig and the Danzig Senate's report on execution of the Council's September recommendations. The report of the High Commissioner⁴⁰ stated that the year 1935 had seen "an intense development of the policy to create a National Socialist state *de facto*." Taking up various aspects of the situation in detail, the report characterized the lack of freedom of the press in the Free City as "entirely unsatisfactory"; described the almost complete absence of parliamentary government; called attention to the abolition of the only non-National Socialist Trade Union;⁴¹ and stressed again the position and influence in Danzig of the Nazi *Gauleiter*, Herr Forster, as well as the bitterness of party feeling and the failure of the police to take action to protect non-Nazis.

The High Commissioner also discussed the resentment of the Danzig Senate concerning the fact that the League guarantee made it necessary for him and for the Council to "take cognizance of the more serious complaints of citizens that their constitutional rights were being infringed," pointing out that the League's efforts to maintain these fundamental principles were regarded "as unnecessary interference in the internal affairs of the Free City." The League's guarantee of the Danzig constitution, the High Commissioner reported, might "in many ways be rendered ineffective" and he went so far as to state "that each meeting of the Council during the past year was followed by an intensification of the policy which had been deplored by the Council." As a result of this situation, the High Commissioner diplomatically suggested that in view of the non-cooperative attitude of the Senate and of the serious infractions of the constitution which he summarized, the League Council "may now wish to consider whether the

appointment of . . . a committee of investigation is necessary." The High Commissioner added that in order to clear up the situation, "there must be a complete change in the attitude of the local government or a change in the machinery through which the League's guarantee is made effective."

The League Council was thus faced with a situation in the Free City which Mr. Eden, rapporteur, characterized at its session on January 22 as "exceptionally grave."⁴² Mr. Eden stated that the Danzig Senate had decided in certain matters not to carry out the Council's recommendations and stressed that Herr Greiser had created "an atmosphere of hostility and resentment toward the Council" by his speech in the Danzig Senate announcing this decision. The other members of the Council expressed their concern and their hope that Danzig would respect its constitution. They were followed by Herr Greiser, who in "an able but impudent speech"⁴³ denied a lack of good-will, or an intention to infringe the constitution, or disregard the League. He asserted that "75 per cent" of the Council's recommendations had been carried out by the Senate, and justified failure to execute the others by arguing that the Danzig Supreme Court had overruled the Council's jurists. Mr. Eden promptly rejected Greiser's argument, and declared that it was "not possible to allow matters to continue in the manner in which they have been allowed to continue during recent months."

Mr. Eden's strong words were motivated not only by a desire to protect the Danzig Opposition from Nazi encroachments on its fundamental rights but above all by the necessity of upholding the League's authority in the Free City. The Danzig question—small in itself—had become a test case: the British, who had led the League in imposing sanctions on Italy, seemed determined to show potential aggressors in Eastern Europe that the League's writ would run there also. The situation was complicated, however, by the fact that Poland, because of its new rapprochement with the Third Reich, had shown itself relatively indifferent to the progressive Nazification of Danzig. Despite its special rights and interests in the Free City, Warsaw seemed loath to bring pressure on the Danzig Nazis to moderate their policy.

Thus the active cooperation of the League power most interested in upholding the League's authority in Danzig was not forthcoming. Poland, however, must rely on the League Council to protect its own rights in the Free City, and during the

40. *Official Journal*, February 1936, pp. 202 *et seq.*

41. The old free trade unions had been taken over by the Nazis as early as May 1933, before they assumed power in Danzig. Cf. *Official Journal*, June 1933, pp. 704 *et seq.*; *ibid.*, October 1933, pp. 1140 *et seq.*; *ibid.*, August 1934, p. 999.

42. *Official Journal*, February 1936, pp. 80 *et seq.*

43. *New York Times*, January 23, 1936.

course of the January negotiations in Geneva, the British are reported to have minced no words with the Poles. The latter were apparently told that, if Poland refused to play a prominent part supporting the League obligations in Danzig, Britain and France would propose that the League abandon the Free City. Such a development would have left Polish rights in the Danzig port at the mercy of the Germans. As a result of this pressure, M. Beck at first endeavored, without success, to mediate between Mr. Eden and Herr Greiser. The former stuck to his guns, however, and threatened to have the League send a supervisory commission to Danzig. Finally, British firmness had its effect and the Poles withdrew their support from Greiser who, when he reported developments to Berlin, was told to accept Mr. Eden's Danzig report.⁴⁴

This report, presented to the Council on January 24⁴⁵ and accepted the same day, represented—at least on paper—a complete capitulation by the Danzig Nazis. The Council in strong though diplomatic language warned that the constitution must be observed in spirit as well as letter; reasserted Geneva's right to intervene in Danzig in order to insure "that the organs of the Free City whether executive, legal or judicial operate in accordance with the constitution. It is not therefore possible to pretend that decisions of any of these organs can control the Council's exercise of its powers under the guarantee." Mr. Eden then proposed that the suggestion to appoint a commission of investigation into Danzig's affairs be reserved for later consideration, thus holding a threat over the Nazis. In regard to such of the Council's September recommendations as had not been put into effect, Greiser promised to introduce the necessary measures. Finally, the Council's resolution, having accepted Mr. Eden's report, adjured the Danzig Senate anew to abide by the constitution and adopted the opinion of the Permanent Court of International Justice regarding the Danzig Penal Code. Mr. Eden concluded by expressing the Council's confidence in its High Commissioner and added significantly that "in carrying out [his] task the High Commissioner will, I am sure, be able to count on the support and influence of all the powers represented on the Council. In this connection the Council may count more particularly on the assistance of Poland who has special interests in the Free City."

It remains to be seen whether the "new era in

Danzig-League relations" which Mr. Eden referred to when presenting his report to the Council has actually been introduced by the January settlement. The Danzig Nazis on February 25, 1936, announced the promulgation of four decrees carrying out the Council's recommendations.⁴⁶ These measures establish a so-called "press court" which is to pass on suspensions and seizures of newspapers. The decree of October 10, 1933 which protected the good name of national associations is repealed, but provision is made in the new measure for penalties against any insults of such associations which "have a tendency to injure the interests of the state." The wearing of uniforms is regulated and may be prohibited if "dangerous to public security and order." Thus the Nazis seem to retain complete control over any possible opposition. On the other hand, the anti-constitutional amendments to the Penal Code were repealed and the municipal employees who had been ousted for "political unreliability" received compensation. In the long run, the spirit in which the new decrees are enforced will determine the sincerity of Danzig Nazi promises to observe the constitution.

The League's authority in Danzig, which alone can force even a semblance of constitutional rule in that miniature Nazi state, in the last analysis depends on the general prestige of the League. That prestige was temporarily enhanced by the League's relatively firm attitude toward an aggressive Italy and its apparent determination to carry out its obligations in Danzig. Since then, Geneva's authority and prestige have fallen to a low ebb. Mussolini openly flaunts the League and seems to have secured his aims in Ethiopia despite Geneva; and Hitler's flagrant unilateral breach of the Locarno Treaty on March 7 has further undermined the rule of law in Europe. As if to emphasize this fact, it is reported from Danzig that the Nazis have introduced what amounts to conscription in the Free City. Youths of military age must report to their local police stations in Danzig and, after proving that they are "German Aryans" and neither Poles nor "non-Aryan Germans," are sent on to recruiting officials. Those who are unwilling or ineligible are apparently dropped from the Nazi labor organization and thus experience grave difficulties in earning a living. At the same time a growing Nazi terror is once more reported from the so-called Free City.⁴⁷

44. Cf. Edgar Ansel Mowrer, *Chicago Daily News*, January 25, 1936. This is officially denied by the Poles. *Gazeta Polska*, January 23, 1936.

45. *Official Journal*, February 1936, pp. 121 et seq.

46. *Berliner Tageblatt*, February 26, 1936; *Danziger Vorposten*, February 25, 1936; *Danziger Volksstimme*, February 26, 1936.

47. *Chicago Daily News*, March 27, 1936; *Manchester Guardian Weekly*, April 10, 1936; Charles Graham, "La Ville libre dangereuse," *L'Europe Nouvelle*, May 2, 1936.